IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 26919 of 2006(D)

PETITIONER:

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1. MEENAKSHY, AGED 38 YEARS,
D/O. MUNDAN, KALATHUMPARAMBIL HOUSE,
THIRUNAVAYA AMSOM, DESOM, TIRUR TALUK.

2. SARASWATHY, D/O. -DO- -DO-

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS:

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1. TAHSILDAR,
TALUK OFFICE, TIRUR.

2. VILLAGE OFFICER,
VILLAGE OFFICE, THIRUNAVAYA, TIRUR.

BY GOVT. PLEADER SMT.ANU SIVARAMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC.26919/06

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE REGISTERED WILL.

EXT.P2: TRUE COPY OF THE DEATH CERTIFICATE ISSUED BY THE THIRUNAVAYA GRAMA PANCHAYAT.

EXT.P3: TRUE COPY OF THE RECEIPT ISSUED BY THE THIRUNAVAYA GRAMA PANCHAYAT.

EXT.P4: TRUE COPY OF THE NOTICE DT.26.5.2006 BY R2 TO THE PETITIONERS.

EXT.P5: TRUE COPY OF THE APPLICATION SUBMITTED BEFORE R2 BY THE PETITIONERS.

EXT.P6: TRUE COPY OF THE NOTICE NO.CR.13306 DT.5.8.06 ISSUED TO THE PETITIONER BY THE VILLAGE OFFICER.

EXT.P7: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT DTD.10.8.06.

EXT.P8: TRUE COPY OF THE COMMUNICATION NO.B14.7629/06 DTD.30.8.06 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.26919 OF 2006

Dated this the 4th day of September, 2007

JUDGMENT

13 cents of property and a residential building, referred to in para (1) of the writ petition, allegedly belonged to Manadevan and his wife Retnavathy Amma. The former bequeathed his rights in favour of the latter and thereafter predeceased her. Retnavathy Amma, in turn, allegedly executed a registered Will, bequeathing the properties to the petitioners. That original Will having been lost, she allegedly applied for and obtained a certified copy of that Will. Thereafter she died.

2. The petitioners requested the Village Officer to accept tax from them on the basis of the certified copy of the Will. The respondents took the stand that the petitioners have to produce the Probate of the Will or the original Will to claim title to property. It is under such circumstances that this writ petition is filed, seeking a direction to the respondents to receive land tax from the petitioners for the property in question, by accepting

the certified copy of the registered Will of Retnavathy Amma in lieu of the original.

3. If the original of a Will is lost, it is open to the courts and statutory authorities, including the respondents, to act on the certified copy of that Will since the same is a registered document. That would be a secondary evidence. Subject to the law relating to admission of secondary evidence, all that is required is for the petitioners to state on oath before the concerned authorities that the original Will has been irretrievably lost. In the case in hand, it is also apparent that even the testator had obtained a certified copy of the Will. But on the strength of such certified copy, all that the petitioners can initially seek for is to have the mutation effected in their name in terms of the request as per the Will. This necessarily is an exercise to be carried out in terms of the Transfer of Registry Rules. Only after completion of such proceedings can the land tax be received by showing the petitioners as the Thandaper Account Holders in terms of the Will.

4. In the aforesaid circumstances, it is directed that the respondents will act on the certified copy of Retnavathy Amma's Will and take into consideration any declarations in the form of affidavits that may be placed by the petitioners regarding the fact that the original of Retnavathy Amma's Will has been irretrievably lost. The respondents will also act upon competent affidavits by the attestors of the Will, provided such attestors are alive. On being thus satisfied of the due execution of the Will in question, appropriate orders shall be issued on proper application under the Transfer of Registry Rules. This shall be followed by appropriate action to receive tax in terms of the decision that may be taken under the Transfer of Registry Rules.

The writ petition is disposed of with the aforesaid directions.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.